

# Notice of Allowability

Application No.

09/924,292

Examiner

Dr. Kailash C. Srivastava

Applicant(s)

CAWLEY ET AL.

Art Unit

1651

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment filed 09/10/2003.
2. ☒ The allowed claim(s) is/are 1-3 and 19.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

5. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☒ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

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|---|--|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)   | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)               |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                               | 4 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>1124</u> |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____                          | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                       |
| 7 <input checked="" type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                 |
|   | 9 <input type="checkbox"/> Other   |


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**Examiner's Comment**

1. Applicants' amendment filed 09/10/2003 is acknowledged and entered.
2. Based on the arguments presented by the applicant and in view of applicants' amendment filed 09/10/2003, the examiner hereby withdraws the rejections to claims 1-3 and 19 under 35 U.S.C. §103(a) in the office action of 04/14/2003.
3. It is noted that instantly claimed claims 2 and 3 recite specific microorganisms. However, this application is otherwise in condition for allowance except for a deposit/declaration from the applicants that the microorganisms recited in Claims 2 and 3 cited *supra* are publicly available without restriction. During an interview on 11/24/2003 with Mr. R. Thompson, Applicants' representative, the Office has received a verbal assurance that an acceptable deposit/written declaration will be made available on or before payment of the issue fee. Pursuant to 37 CFR § 1.809(c), applicant is hereby required to file the needed deposit/declaration within three months from the mailing date of this action. The period for satisfying this requirement is not extendable under 37 CFR § 1.136. Failure to make the needed deposit/declaration in accordance with this requirement will result in abandonment of the application for failure to prosecute.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (703) 605-1196. The examiner can normally be reached on Monday to Thursday from 7:30 A.M. to 6:00 P.M. (Eastern Standard or Daylight Saving Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743 Monday through Thursday. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

  
Kailash C. Srivastava, Ph.D.  
Patent Examiner  
Art Unit 1651  
(703)-605-1196

November 25, 2003



CHRISTOPHER R. TATE  
PRIMARY EXAMINER